United Nations A/HRC/29/38/Add.1

General Assembly

Distr.: General
15 June 2015

Original: English

Human Rights Council
Twenty-ninth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro

Addendum

Mission to Malaysia* **

Summary

The Special Rapporteur on trafficking in persons, especially women and children, visited Malaysia from 23 to 28 February 2015, at the invitation of the Government. In the present report, the Special Rapporteur highlights the country's commitment to combating trafficking in persons, as evidenced by its legislative and policy framework, and its multidisciplinary approach in taking anti-trafficking measures, which involves key Government agencies and some civil society organizations (CSOs). She nonetheless expresses concern about, inter alia, the focus on trafficking for the purpose of sexual exploitation to the neglect of other forms of trafficking, particularly labour trafficking; and the restrictive national immigration policy focused on rapid deportation of irregular migrants, which does not provide the opportunity for accurate identification of and provision of assistance to victims of trafficking. Other concerns include the placement of victims in shelters without freedom of movement and the capacity gap of enforcement officials which is further exacerbated by reported prevalence of corruption of some officials. On that basis, the Special Rapporteur makes a number of recommendations to the Government, including with regard to ratification of key international legal instruments, strengthening of national legislation and policies to combat trafficking, and increasing capacity-building activities for government officials. The Special Rapporteur also encourages the Government to address key gaps in the assistance provided to victims of trafficking, especially in terms of providing them with effective remedies, and increasing the involvement of CSOs in the provision of assistance to victims. She also

* Late submission.

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calls on the Government to improve the justice delivery system and strengthen its regional and international engagement in cooperating with countries of origin to address the root causes of trafficking and create more opportunities for safe migration.

Annex

[English only]

Report of the Special Rapporteur on trafficking in persons on her mission to Malaysia

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I. Introduction and methodology

1. The Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, visited Malaysia from 23 to 28 February 2015, at the invitation of the Government. The objectives of the visit were to examine the prevalent forms of trafficking in persons in the country and to assess the effectiveness of measures taken by the Government to combat trafficking in persons and to protect the human rights of trafficked persons.

2. During her mission, the Special Rapporteur visited Kuala Lumpur, Melaka, Rembau and Kota Kinabalu in the State of Sabah. She met high-level officials, including the Minister and Senior Deputy Secretary General (Security) of Home Affairs, the Director General of the Labour Department (Peninsular) of the Ministry of Human Resources, the Minister of International Trade and Industry, the Minister of Women, Family and Community Development, and the Deputy Secretary General (Multilateral Affairs) of the Ministry of Foreign Affairs. She also met with the Chief Registrar of the Federal Court, the Deputy Inspector General of Police of the Royal Malaysia Police and the Secretary General of the Ministry of Plantation Industries and Commodities. She also exchanged views with members of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants.

3. She interacted with various interlocutors, including the representatives of relevant authorities at the State level, particularly the Sabah State Government in Kota Kinabalu. The Special Rapporteur also met representatives of CSOs working in the field of trafficking in persons. She visited an immigration detention centre (Semenyih), as well as three government shelters for women (Sabah), children (Rembau) and men (Melaka) victims of trafficking and interviewed some of them. She also met with representatives of the National Human Rights Commission and civil society. Finally, she exchanged views with representatives of the United Nations agencies and programmes in the country, as well as representatives of the diplomatic community. The Special Rapporteur expresses her gratitude to the Government for its invitation and cooperation and to the CSOs for their valuable inputs

II. Main findings

A. Forms and manifestations of trafficking in persons

4. In the context of Vision 2020, a national programme which aims to propel the country to becoming a developed nation by the year 2020, Malaysia has achieved remarkable economic growth over the last five decades, bolstered by low wages, oil revenues, foreign direct investment targeted at the manufacturing sector and high global demand for its commodities, in particular palm oil.[1]

5. The Malaysian economy relies largely on foreign migrant workers. In an estimated labour force of 12.9 million in 2012, 1.6 million documented and an estimated 1.3 million undocumented foreign workers contributed to its low-wage economic growth strategy.[2] The geographic location and extended coastline of Malaysia further draw a large influx of

[1] United Nations Development Programme, Country Programme Action Plan 2013–2015, p. 6. Available from www.my.undp.org/content/dam/malaysia/docs/key_documents/CPAP%202013-2015.pdf.

[2] Ibid., p. 6.

foreign migrant workers from the Asian region, notably from Bangladesh, Cambodia, Indonesia, India, the Lao People's Democratic Republic, Myanmar, Nepal, the Philippines, Thailand and Viet Nam, who willingly embark on the journey to Malaysia in search of better employment opportunities in the manufacturing, plantation, construction and agriculture sectors and domestic work.

6. While not all cases of migration result in trafficking, there are cases of mixed migration that includes asylum seekers, refugees and migrants, who then end up being trafficked. Moreover, the prevalence of undocumented migrant workers increases their risk of becoming victims of trafficking.

7. Malaysia faces challenges as a destination and, to a lesser extent, a transit and source country for men, women, girls and boys subjected to trafficking in persons. As a destination country, it receives trafficked persons, mainly from East Africa, the Middle East and South Asia. Trafficked persons may also transit through Malaysia to destination countries in the Middle East. Malaysians are trafficked to countries such as China, France, Japan, Singapore, Thailand and the United Kingdom of Great Britain and Northern Ireland.

8. The present report focuses on the prevalent forms of trafficking in Malaysia as a destination and transit country and assesses the effectiveness of its counter-trafficking responses within the country. The Special Rapporteur learned that the forms of trafficking listed below are particularly widespread in the country.

1. Trafficking for labour exploitation

9. Typically, cases of labour trafficking in Malaysia involve low- and semi-skilled migrant workers from the Asia and Pacific region intended for arduous and unpleasant work in the agricultural, construction and manufacturing sectors and domestic work. There are also indications that fishermen mainly from Cambodia and Myanmar are trafficked for bonded labour to work on Thai fishing boats in Malaysian waters. The Special Rapporteur was informed that those who escape from those boats to the Malaysian coast are often re-trafficked to palm oil plantations in Sarawak State.

10. Victims of labour trafficking are recruited through fraud and deception about the type and conditions of employment by unscrupulous recruitment agents — in source countries and Malaysia — and employers; most commonly victims are exploited through breaches of contracts, payment of excessive recruitment and immigration fees, reduction or non-payment of salary, excessive working hours and a lack of rest days. Many find themselves in a situation akin to debt bondage, trying to repay exorbitant debts owed to traffickers (including recruitment agencies) from their journey when promises of well-paying employment turn into exploitative situations.

11. Migrant workers are dependent on their employers for their work permit, which is necessary to legally remain in Malaysia. This leaves trafficked workers in a vulnerable position: if they report or escape their exploitative conditions, employers can simply revoke their work permit, making them irregular migrants who will lose their livelihood and be expelled from the country. In some cases, foreign workers' vulnerability to exploitation is heightened when employers neglect to obtain proper documentation for workers or employ workers in sectors other than those for which they were granted an employment visa. Practices such as employers withholding passports are reportedly common and contribute to the trafficking situation.

2. Trafficking for domestic servitude

12. Over 300,000 migrant domestic workers are estimated to be in Malaysia,[3] the majority of whom are women from Cambodia, Indonesia and the Philippines. While all domestic workers are not victims of trafficking, a large number of those women and girls are trafficked into domestic servitude by employment agencies in their home country or Malaysia or employers in Malaysia, at times with the alleged complicity of State officials. Many fall victims to debt bondage when they assume an initial debt as part of the terms of employment. Widely reported abuses and exploitation that further contribute to the trafficking situation include breaches of contract, excessive recruitment fees, non-payment of salary, deductions from low wages, excessive working hours, a lack of rest days and the withholding of passports. Many domestic workers have also experienced unimaginable physical and mental abuse at the hand of their employers, from being deprived of food to beatings with electrical wires, scalding with hot water, harassment, psychological abuse and sexual assault.

13. Owing to the hidden nature of their work, which is carried out in private homes, and to fear of arrest and eventual deportation, such workers are unable to leave their employers and seek redress for human rights violations. In the rare instances where complaints are lodged with the police by the victims or non-governmental organizations (NGOs), those complaints are not acted upon. Instead, it is not uncommon for the victims to be intimidated for having left their employers and to be returned to those employers or their employment agency with threats, rather than being offered protection and alternative employment.

14. Moreover, underage victims, whose personal information and age are incorrectly reflected in their passports/documents by recruitment agencies, face additional distress in escaping their abusive employers for fear of being caught and reprimanded for having falsified documents.

3. Trafficking for sexual exploitation

15. Malaysia is a destination for the trafficking of women, girls and boys into the sex industry. Factors contributing to trafficking in women and children for sexual exploitation include the demand for sexual services, the prevalence of tourism and the existence of a large migrant worker community. Young foreign women (including those from East Africa, the Middle East, the Russian Federation and South Asia) are lured with false promises of legal work in Malaysia, such as domestic work, babysitting, waitressing and modelling, but are subsequently coerced into the commercial sex trade. Since 2014, CSOs have also noted an increase in the prevalence of trafficking in boys for work in the sex industry in Malaysia. Trafficking of children for sexual exploitation is reportedly emerging within communities of irregular migrants.

16. Additionally, there is a growing trend of trafficking victims to employers/businesses to gratify the sexual needs of male migrant workers. Some employers are also known to reward the performance of employees by providing sexual incentives. Moreover, there are indications of Vietnamese women and girls who enter into brokered marriages in Malaysia and are subsequently forced into sexual exploitation to repay their "marriage" debts, which range from 4,000 to 6,000 United States dollars. Trafficking of Malaysian girls and women for sexual exploitation to tourist destinations within the country has also been noted.

[3] Migrant Working Group and Northern Network for Migrants and Refugees, joint submission to the universal periodic review of Malaysia (2009), p. 1. Available from http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MY/MWG_JUMP_MYS_UPR_S4_2009_MigrationWorkingGroup_theNorthernNetworkforMigrantsandRefugees_JOINT_upr.pdf.

17. As a transit country, victims from Indonesia primarily transit through Malaysia en route to Middle Eastern countries to circumvent anti-trafficking protection measures put in place by their governments.

18. Organized crime syndicates are allegedly responsible for some trafficking cases. They usually take advantage of the vulnerable and disadvantaged situations of the victim, arrange for their travel to Malaysia and process their travel documents and visas, including student visas. Once in Malaysia, the victims' passports are confiscated and they are forced to provide sexual services to repay the debts incurred for their travel. If they refuse, they are beaten up and threatened that if they run away or go to the police they would risk imprisonment before being deported for immigration offences and/or soliciting prostitution. They are watched and accompanied at all times.

4. Other forms of trafficking in persons

19. Refugees and asylum seekers in Malaysia lack recognition of their status or the ability to work legally in Malaysia, which is not a signatory to the 1951 Convention relating to the Status of Refugees or the 1967 Protocol thereto.[4] As a result, this category of persons is subject to becoming vulnerable to trafficking. This is especially true for Rohingya from Myanmar, who typically embark on maritime and overland journeys, often via Thailand, to reach Malaysia. Initially smuggled across borders, some are subsequently trafficked to fishing boats and palm oil plantations for labour exploitation, ending up in bonded labour to repay their debts from the transport. Others are held captive and abused in Malaysia until ransom is paid by their relatives.

20. There are also indications of child trafficking for the purpose of forced begging among the refugee population, mostly Rohingya children. Most perpetrators in the cases identified are allegedly family members or traffickers who pass off these children as their own.

21. In addition, the Special Rapporteur was informed that a significant number of refugees, asylum seekers and stateless persons, particularly those from the Filipino and Indonesian communities in Sabah and Rohingya from Myanmar, are increasingly becoming victims of trafficking. Their lack of formal recognition significantly restricts their and their children's ability to obtain education, employment opportunities, health services, freedom of movement and access to justice. This in turn makes them easy prey for unscrupulous traffickers and employers who exploit them with impunity. Their children are vulnerable to being trafficked for labour exploitation. There is also anecdotal information that undocumented older children are easily trafficked for "drug-running". Finally, there are also reports of children being trafficked for adoption purposes from Singapore to childless families in Malaysia (the destination country).

B. Criminalization of irregular migration and the impact on trafficked persons

22. The Special Rapporteur recognizes that the economy of Malaysia relies to a large extent on the low- or semi-skilled labour of migrant workers, particularly in such sectors as construction, manufacturing, services, plantation, agriculture and plantations, and domestic work. However, the Special Rapporteur observed that the approach of Malaysia to

[4] Nevertheless, Malaysia provides assistance and protection on a case-by-case basis to some refugees and asylum seekers in collaboration with the Office of the United Nations High Commissioner for Refugees and other international organizations.

migration effectively relies on the criminalization of irregular migrants. Where not carefully designed, such an approach increases the vulnerability of irregular migrants to becoming victims of trafficking because they are criminalized. She cautions that migration projects can turn into trafficking when migrants are placed in exploitative situations during their journeys or at their destination, when their rights are drastically limited or completely denied. The categorization of all migrants as irregular or undocumented is detrimental to the identification of potential victims of trafficking.

23. Irregular migration is prohibited under the Immigration Act (1959). The law envisages severe penalties for convicted undocumented workers, who are subject to fines up to 10,000 Malaysian ringitt, up to five years' imprisonment and deportation. Whipping (caning) of those convicted for irregular entry is not an uncommon penalty.

24. Undocumented migrants who are arrested may legally be held up to 14 days before being brought to a magistrate, contrary to the 24-hour time frame guaranteed in the Constitution. Sentences are passed following summary hearings in special immigration courts by magistrates, some of whom have a reportedly low capacity to deal with migration, refugee, asylum or trafficking issues. Given the expedited nature of the proceedings, it is also not clear to what extent judicial guarantees, such as legal representation and the explanation of available remedies, are systematically provided to migrants. Following these hearings, the migrants are placed in detention centres awaiting deportation.

25. The strong political inclination towards criminalizing and prosecuting irregular migrants may have unintended negative consequences for the victims of trafficking, in spite of some protection against immigration-related criminal prosecution provided for in the Anti-Trafficking Act (2007). Irregular migrants wanting to report abuse, including trafficking and labour exploitation, risk exposing themselves to the real danger of being charged for the offence of "irregular entry or stay", detained and ultimately expelled. As a result, many irregular migrants are afraid to contact the authorities and avoid seeking legal protection and remedies, even when they are entitled to them. This approach, which emphasizes national security, leads to the criminalization of victims for crimes committed while being trafficked and for which they should not be held liable.[5]

26. In order to promote safer labour migration, the Government entered into bilateral memorandums of understanding with several neighbouring countries (see part J below) that facilitate and provide legal avenues for migration and the recruitment of migrant workers from these countries. Furthermore, in an attempt to regularize the situation of irregular migrant workers already in the country, the Government launched the Illegal Immigrant Comprehensive Settlement Programme in 2011, whereby irregular migrants were allowed to register and be either legalized or deported back to their countries without prosecution. It is noteworthy that the handling of irregular migrants by Malaysia has occasionally become an issue of contention with neighbouring countries.

27. Nevertheless, opportunities for safe migration for low-skilled labour remain inadequate. The regulation of employment agencies is ineffective, regardless of the fact that licensing of new employment agencies is on hold and licenses of existing agencies will not be extended beyond 2021.

[5] See the Principles and Guidelines on Human Rights and Human Trafficking recommended by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

C. Legislative, policy and institutional framework

1. Legislative framework

(a) International and regional framework

28. Malaysia is party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter, the Trafficking in Persons Protocol) and a number of international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It has also ratified the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105) and the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization (ILO).

29. Regrettably, Malaysia is not party to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto or the 1954 Convention relating to the Status of Stateless Persons and lacks a formal legislative and administrative framework to address refugee matters. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the ILO Domestic Workers Convention, 2011 (No. 189) and the Protocol of 2014 to the Forced Labour Convention, 1930, have also not been ratified, while the Abolition of Forced Labour Convention, 1957 (No. 105) was denounced in 1990.

30. At the regional level, Malaysia is a founding member of the Association of Southeast Asian Nations (ASEAN). It is party to a number of binding and non-binding instruments including the ASEAN Human Rights Declaration and the Treaty on Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries. It supports the ASEAN sectoral bodies, such as the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children and the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. As a member of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, Malaysia continues to support the practical measures to help combat trafficking in persons and related transnational crime in the Asia and Pacific region.

(b) National framework

31. At the national level, slavery and forced labour are prohibited under section 6 of the Federal Constitution.

32. The country's Anti-Trafficking in Persons Act of 2007 was amended in 2010 and renamed the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (hereinafter, Anti-Trafficking Act). In accordance with the Trafficking in Persons Protocol, the adopted definition of trafficking in persons is comprehensive and criminalizes all aspects of trafficking, including labour trafficking (sect. 2 (g)). Trafficking in persons for the purpose of exploitation carries a penalty of up to 15 years' imprisonment and a fine (sect. 12). The offence of trafficking in persons by means of threat; use of force or other forms of coercion; abduction; fraud; deception; abuse of power; abuse of the position of vulnerability; or payments/benefits to obtain the consent of a person having control over a trafficked person is punishable by between 3 and 20 years' imprisonment and a fine (sect. 13). Profiting from the exploitation of a trafficked person can lead to up to 15 years' imprisonment, payment of fines and forfeiture of the profits from the offence (sect. 15). The offence of bringing in transit a trafficked person through Malaysia or facilitating such act can result in imprisonment of up to 7 years and a fine (sect. 15A).

33. Trafficking in children is punishable with imprisonment ranging from 3 to 20 years and a fine (sect. 14). In accordance with the Trafficking in Persons Protocol, when the trafficking offence involves children, it is irrelevant whether the consent of the trafficked child was obtained (sect. 16).

34. The law envisages punishment for trafficking offences committed by corporate bodies, employees or their agents (sect. 64). Cases of trafficking that occur in Malaysia as a source, transit or destination country are offences under the Act. It is also applicable to offences committed by Malaysian citizens and permanent residents outside Malaysia. (sects. 3 and 4).

35. In addition to the Anti-Trafficking Act, other legislation may be invoked to prosecute trafficking or trafficking-related offences. The Penal Code punishes offences that may amount to trafficking and other forms of exploitation, such as trafficking for purposes of prostitution (sects. 372 and 373) and forced labour (sect. 74). It criminalizes habitual dealing in slaves (sect. 371). Prostitution is not a criminal offence per se under the Penal Code, but soliciting prostitution leads to up to one year's imprisonment and/or a fine (sect. 372 B). Exploitation of a person for the purposes of prostitution; living on or trading in prostitution of another person; and owning and managing brothels lead to up to 15 years' imprisonment, whipping and payment of fines (sects. 372 and 372A). Moreover, foreign prostitutes or persons living on or receiving the proceeds of prostitution are considered as prohibited migrants and subject to expulsion from the country under section 3e of the Immigration Act (1955).

36. The Employment Act (1955) sets out minimum labour protection standards and is applicable to employees whose wages are RM 2,000 and below, and all manual labourers irrespective of their wages. Among other provisions, the Act provides for the limitation of working hours, the provision of paid leave and overtime pay. Its scope extends to foreign employees together with, inter alia, the Employment (Restriction) Act 1968 (Revised 1988), which governs employment permits, registration and restrictions for non-Malaysian citizens, and the Immigration Act (1957). Domestic workers, labelled as "domestic servants", are covered by the Employment Act. However, they are excluded from protection under key articles of the law, including those on fair termination of contract (arts. 12 and 14), the minimum number of working days per month (art. 16), maternity provisions (part IX), rest days (part XII), hours of work, holidays and other conditions of service (including annual and sick leave) and termination, lay off and retirement (part XIIA). They are also not within the purview of the Domestic Violence Act (1994), which provides legal protection for victims of violence in the home and supplements the Penal Code.

37. The Children and Young Persons (Employment) (Amendment) Act 2010 provides for the conditions of their employment in light work within the family, specific public entertainment, apprenticeships and work sponsored by the Government. It forbids night work and underground work for children and young persons and sets forth hours of work.

38. The Private Employment Agencies Act (1981) regulates the recruitment agencies. It requires all recruitment agencies to be licensed and to deposit a security bond, and limits the amount of fees that can be charged for recruitment services. It also provides the Director General of Labour with broad inspection and investigatory powers, including the ability to cancel licences and to dispose of the recruitment bond for breaches. Offences listed in the Act include overcharging for recruitment agency services and providing false

or incorrect information. However, complaint mechanisms are unspecified and worker rights and obligations are not defined.[6]

39. The Child Act (2001) establishes standards for the treatment of children and provides for the care, protection and rehabilitation of children in need. The Act prohibits exploitative acts often committed in the process of trafficking, such as the procurement of a child for purposes of prostitution/the purposes of sexual intercourse either within/outside Malaysia (sects. 43 and 44). Moreover, the transfer of custody or control of a child for any valuable consideration is considered an offence under section 48. It also condemns the bringing into Malaysia of a child by false pretences and the taking out of Malaysia a child without appropriate consent of his/her legal custodian (sects. 49 and 52).

40. The Passports Act (1966), which also aims at preventing the abduction and trafficking of children, criminalizes the withholding of passports and documents with payment of fine or up to 5 years' imprisonment or both (sect. 12 (d)).

41. Other legislation relevant to cases of trafficking in persons include the Maritime Enforcement Agency Act (2004), the Customs Act (1967), the Security Offences (Special Measures) Act (2012) and the Anti-Money Laundering and Anti-Terrorism Financing Act (2001).

2. Policy framework

42. Since 2010, Malaysia has been pursuing a five-year National Plan of Action to Combat Trafficking in Persons which focuses on nine programme areas, including strengthening legal mechanisms, joint action of law enforcement agencies, prevention, protection and rehabilitation, capacity-building and partnership. While considering the policy is a positive initiative to address human trafficking, particularly labour trafficking, the Special Rapporteur was not provided with any information regarding the achievements generated by the plan, its implementation and monitoring. At the time of the visit, the Special Rapporteur was informed that the action plan for 2015–2020 was being finalized.

43. Another policy relevant to the trafficking effort is the policy on the recruitment of foreign workers (1991), which provides guidelines for the treatment of foreign workers. This provides that wages, benefits and terms of conditions of employment should be similar to those for nationals, that migrant workers should have written contracts and that costs of recruitment and repatriation should be borne by the employer. Nevertheless, the Special Rapporteur received information that this policy is not often enforced.

3. Institutional framework

44. The Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants was established in 2008. It is responsible for, inter alia, coordinating the implementation of the Anti-Trafficking Act in cooperation with government departments and international organizations. It is mandated to collect data and monitor migration patterns with a view to formulating and implementing anti-trafficking policies and programmes that focus on prevention and protection of victims. It also advises the Government on developments at the international level (see Anti-Trafficking Act, sect. 7).

45. The multidisciplinary structure of the Council is led by the Ministry of Home Affairs, which acts as its secretariat at the national and provincial levels. The Council comprises of the Attorney General and high-ranking officials of various government agencies, including the Ministries of Internal Security; Foreign Affairs; Women, Family

[6] See ASEAN, *Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region* (2011), p. 17.

and Community Development; Human Resources; Transport; and Information, Communication and Culture. The Special Rapporteur noted with concern the absence of key government offices dealing with industry, trade, plantations and the construction and textile sectors, areas in which human trafficking may take place. She encourages the Government to pursue its intention of enlarging the Council to include additional relevant institutions at the peninsular and State levels.

46. The Council is composed of five committees: (a) the Legislation Committee, headed by the Attorney General's Chambers; (b) the Victim Protection and Rehabilitation Committee headed by the Ministry of Women, Family and Community Development; (c) the Media and Publicity Committee, headed by the Ministry of Information, Communication and Culture; (d) the Special Committee to Study the Issues of Labour Trafficking, headed by the Ministry of Human Resources; and (e) the Enforcement Committee, headed by the Royal Malaysian Police. The main functions of the latter committee are to rescue victims of trafficking and detain perpetrators, investigate cases, prevent trafficking, raise awareness and build capacity of its members.

47. Furthermore, the National Human Rights Institution plays an active role in combating trafficking in persons, as it also receives and inquires into complaints of alleged human rights violations, including complaints relating to trafficking in persons, and monitors shelters and detention facilities. It proposes and formulates policies and standard operating procedures, raises awareness and engages with stakeholders at the national, regional and international levels.

48. The Special Rapporteur commends the establishment of the Council and its initiatives to combat trafficking. However, she observed that coordination of work between government bodies remains a challenge, partly owing to their varying level of commitment to the issue of trafficking and their understanding of trafficking and its impact on/relevance to their work. Of further concern is the limited information-sharing and disjointed coordination between government bodies at the federal and State levels, particularly noted by the Special Rapporteur in Sabah, for instance, where a number of authorities appeared not to be aware of the anti-trafficking initiatives and work undertaken by the Council. Moreover, while five NGOs are formally affiliated with the Council and included in policy discussions, there is a need to widen the scope of civil society participation.

D. Identification of trafficked persons

49. Members of the Enforcement Committee of the Council, namely officers from the Anti-Trafficking Unit of the Royal Malaysian Police, the Immigration Department, the Royal Malaysian Customs, the maritime agencies and the Labour Department, have the primary responsibility for identifying trafficked persons in collaboration with each other. The identification of victims is undertaken on the basis of standard operating procedures for enforcement agencies dealing with human trafficking and smuggling of migrants developed by the Council in 2013.

50. While there is increasing recognition of trafficking for labour exploitation, trafficking in persons in Malaysia is viewed primarily as a problem concerning women and children trafficked for sexual exploitation. Statistics from the Royal Police reveal that from 2008 to 2014, 509 cases of trafficking for sexual exploitation were identified, while 291 cases of trafficking for forced labour were identified and none was identified for other forms of exploitation.[7] This is partly explained by the fact that raids and rescues conducted

[7] Royal Malaysian Police, statistics provided during the visit of the Special Rapporteur.

by the police in entertainment/sex industry are the main means of identifying victims of trafficking.

51. The Special Rapporteur heard allegations of the corruption of law enforcement officers which often hampers the effective identification of trafficked persons. She was informed of numerous cases in which immigration, police and maritime enforcement officers were directly implicated in trafficking in persons or turned a blind eye to the situations of trafficked persons. The prevalence of corruption coupled with the inadequate capacity of enforcement officers to accurately identify trafficked persons results in deep mistrust of law enforcement officers by trafficked persons and those at risk of being trafficked, such as migrants, refugees and asylum seekers.

52. There are two categories of labour officers within the Labour Department of the Ministry of Human Resources: generalists, who conduct inspections to identify forced labour in workplaces, and specialists. As they are enforcement officers, specialist labour inspectors are also empowered to identify and investigate cases of trafficking, as well as rescue victims. They also apprehend suspects and testify in court.

53. In 2014, a total of 42,804 labour inspections were conducted in the country; 30,228 in peninsular Malaysia; 7,952 in Sabah and 4,624 in Sarawak. Specialist labour inspectors investigated seven cases, of which two were identified as cases of trafficking while five cases were referred for investigation under the Employment Act. These figures suggest that cases involving the confiscation of passports or the withholding of salaries are often misidentified as labour offences owing to the absence of clarity on what trafficking for the purposes of labour exploitation is and what are other labour cases, and the fact that labour inspectors specialized in labour trafficking are too few for the number of workplaces and not sufficiently trained.

54. Other factors that contribute to the lack of identification of cases of trafficking in sectors typically linked with it is the lack of clear understanding of the issue of trafficking by authorities; an attitude which could hamper national anti-trafficking initiatives. A case in point is the apparent unwillingness of the Ministry of Plantation Industries and Commodities to identify possible situations of trafficking for labour exploitation on the grounds that the palm oil market is highly competitive and tightly regulated and that the frequent use of child labour in this sector is culturally accepted. The Special Rapporteur wishes to emphasize that, in an industry relying on low-skilled migrant workers and given the prevalent practice of recruiting foreigners to work in the industry and credible information from stakeholders, the occurrence of human trafficking cannot be excluded from this sector.

55. There is also a real danger that victims of trafficking are misidentified as irregular migrants, resulting in their arrest, detention and deportation. Once in the immigration detention centre, the Special Rapporteur found there was no possibility for potential victims to be identified and their deportation reversed. In this regard, she noted that of the four persons she interviewed at random at an immigration detention centre in the course of her visit, two could have been identified as trafficking cases by trained officers. Yet, these persons will be deported without proper assessment of whether or not their return would be safe or whether they will be at risk of re-trafficking.

56. In addition, there is a lack of appropriate infrastructures and services designed to facilitate the identification of trafficked persons, such as hotlines dedicated to trafficked victims. The Ministry of Women, Family and Community Development maintains a national helpline, which operates 24 hours a day, seven days a week to address a variety of social concerns, such as domestic violence and child abuse. Similarly, a Kuala Lumpur police hotline operates 24 hours a day to receive public complaints on a number of issues. Regrettably, these hotlines are available only in Bahasa Malaysia and English, despite the

fact that trafficked persons in Malaysia mostly speak other languages. The lack of capacity of operators to accurately identify victims from among the callers and to provide information for their protection is an additional aspect that hinders identification.

E. Protection

1. Shelters

57. Protection officers appointed by the Ministry of Women, Family and Community Development are responsible for the protection, care and supervision of victims of trafficking in shelters (see Anti-Trafficking Act, sect. 43). Protection for identified or potential victims of trafficking is provided on the basis of interim protection orders and protection orders issued by magistrates. Identified or potential victims of trafficking are placed by enforcement officers in temporary custody and brought before a magistrate within 24 hours for the purpose of obtaining an interim protection order, under which they are placed in a shelter for 14 days while an investigation is carried out. On the basis of the outcome of the inquiry of both the enforcement and the protection officers, the magistrate indicates that a person is a victim of trafficking in need of care and protection by issuing a protection order that places victims from Malaysia and those permanently residing in the country up to two years in a shelter (see Anti-Trafficking Act, sects. 44–51). Foreigners who are identified as victims of trafficking stay in a shelter for three months before being expulsed to their country of origin. Whereas those not found to be victims are immediately deported. Protection orders can be extended under exceptional circumstances, such as when the victim's evidence is still being collected.

58. In 2014, 1,684 individuals rescued were granted interim protection orders, of whom 303 were granted protection orders and placed in the government shelter. The overwhelming majority of victims identified were female (295 female and 8 male victims) mainly from Indonesia (141), Viet Nam (91) and the Philippines (31).[8]

59. The Ministry of Women, Family and Community Development currently runs eight shelters. The Special Rapporteur was impressed by the standard of the three government shelters for children, women and men victim to trafficking that she visited, which were modern, clean and provided limited access to psychological, medical, language and other support services in collaboration with a handful of NGOs. While the committed and dedicated staff in the shelters do their utmost within available resources, there is an evident lack of capacity to provide victims with comprehensive support, including psychological and legal. For instance, although trafficked victims in the shelters come from various countries and speak different languages and dialects, there are no on-site interpreters available to assist them on a daily basis. Furthermore, trafficked persons are not provided with suitable educational and vocational training during their stay in the shelter. Women and girls are provided with vocational training traditionally associated with women, such as sewing, cooking and handicrafts, which may not correspond with their ambitions and talents, or the needs of the labour market.

60. What is perhaps more alarming is that assisted victims are kept in closed shelters and deprived of freedom of movement and punished for escaping. The Special Rapporteur is concerned that, in effect, such shelters are equivalent to detention centres where trafficked persons are treated as criminals in custody rather than victims placed in a refuge

[8] See Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, "Progress Report 2014/2015", pp. iii–iv.

for care and protection from further harm. Victims are also prohibited from working while in shelters.

61. The fact that they are unable to leave and work outside the shelter is reported to create a strong disincentive among trafficked persons in Malaysia to be identified as such. Nearly all of the victims that the Special Rapporteur interviewed were not clear of the significance of their status and its resulting entitlement and expressed their wish to be released from the shelter to work and pay back debts.

62. Some CSOs have the capacity to provide protection and assistance to victims of trafficking. However, they are currently not legally considered protection officers and are not able to contribute to the fight against trafficking. Their support is sought on an ad hoc basis because of the lack of enabling legislation designating them as protection officers with a responsibility for the care of victims and the identification of victims of trafficking. The Special Rapporteur hopes that the pilot project being considered by the Ministry of Women, Family and Community Development to enable NGOs to manage shelters will be implemented, taking into consideration, inter alia, the need of victims and the capacities and autonomy of NGOs. Additionally, NGO-run shelters are not recognized as official places of refuge for victims of trafficking. The Special Rapporteur hopes that the intention of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants to bring about the amendment of the Anti-Trafficking Act for a more effective collaboration with CSOs is realized without delay.

2. Non-criminalization of trafficked persons

63. Section 25 of the Anti-Trafficking Act provides for the non-criminalization of identified trafficked persons for offences related to their irregular entry and unlawful residence in Malaysia, as well as the procuring and possession of fraudulent travel documents for the purpose of entering the country. However, immunity from criminalization is not provided to all the offences committed by victims as a consequence of their trafficking, although it would be possible to provide such exemptions on a case-by-case basis under the general exception part of the Penal Code.[9]

3. Rescue operations

64. According to information provided by the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, in 2014, six integrated operations to rescue victims of trafficking were conducted jointly by police, customs, maritime enforcement, immigration and labour officers, in addition to individual operations by those enforcement agencies. Raids, particularly in the entertainment/sex industry, were the main means of identifying victims.

65. The Special Rapporteur notes with concern that such operations often do not fully respect victims' human rights as victims and points out that the limited information offered to them, often not translated into the victim's language, does not take into account why they have been apprehended or what their rights are at the time of the raid and in subsequent interviews and during detention. Physical and emotional abuses by law enforcement officers were also mentioned during the interviews. Moreover, images and photographs of such victims regularly feature in the media, in spite of the guarantees of privacy envisaged under the Anti-Trafficking Act.

[9] See, for example, section 94 of the Penal Code which provides general exceptions for acts to which a person is compelled by threats to commit.

F. Investigation, prosecution and punishment

66. Investigation for offences under the Anti-Trafficking Act (sect. 28) is conducted by enforcement officers, who include police, immigration, customs and maritime officers, with the power to arrest, conduct search and seizure, and examine persons. Considered as enforcement officers, labour inspectors are also empowered to identify and respond to trafficking for forced labour. A standard operating procedure for enforcement officers (see para. 49 above) guides the methods of accomplishing tasks and establishes general performance standards, including in the area of investigation, raid, arrest, rescue and networking/coordination among enforcement agencies.

67. A number of factors hamper the effective and swift investigation of trafficking cases. These include limited coordination among enforcement agencies and the lack of skills to handle cases of trafficking, as well as corruption. Moreover, it has been brought to the Special Rapporteur's attention that, on several occasions, credible requests to further investigate cases of trafficking of children for begging in well-known hotspots have remained unheeded.

68. A corollary of this is the low rate of prosecution. The Attorney General's office reported that 38 cases of trafficking were prosecuted in 2014: interestingly, the majority of cases (26 cases) were for forced labour exploitation, while 12 were for sexual exploitation. However only three convictions were secured in those cases of labour exploitation, two ended in acquittals, one case was thrown out and the rest were still pending trial. The Special Rapporteur was also informed of penalties against an employer who had confiscated the passports of 29 victims of trafficking and who was fined RM 5,000.

69. The Special Rapporteur acknowledges the positive measures taken to prosecute cases of human trafficking. These include the appointment of 28 deputy public prosecutors within the Attorney General's Chambers who are specialized in trafficking; the issuance of a directive to investigate all cases involving foreign nationals under the Anti-Trafficking Act, except where the offences committed fall within ordinary criminal law; the issuance of another directive for the referral of all cases of trafficking investigated to the Attorney General's Chambers before instituting prosecution and offering the possibility of converting charges made against perpetrators under the Penal Code and Immigration Act to charges under the Anti-Trafficking Act; and the introduction of a coding system for registering cases of trafficking to ensure proceedings take priority in court. A standard operating procedure for prosecution launched in 2013 aims to standardize and create a uniform approach to dealing with cases of trafficking.

70. The authorities cited the reluctance of victims to cooperate with law enforcement authorities as one of the main reasons for low prosecution rates. While noting that assistance to victims should be provided irrespective of their collaboration with authorities, as provided in the Anti-Trafficking Act and the Trafficking in Persons Protocol, the Special Rapporteur wishes to highlight that short reflection periods (three months for foreigners), lengthy human trafficking trials, limited legal assistance and information on the case, confinement in shelters, the inability of victims to work while in confinement, fear of reprisal when reporting traffickers and deportation are factors that further discourage victims of trafficking from identifying themselves as such and collaborating with the enforcement authorities.

71. Furthermore, in spite of ad hoc training on the Anti-Trafficking Act, prosecutors and judicial officers were not sufficiently familiar with this law. Lack of clarity of what constitutes trafficking for forced labour and what are other labour crimes also emerged as a concern affecting the investigation and adjudication of such cases.

G. Redress

72. Compensation and restitution are an integral part of effective remedies for victims of trafficking under international law and standards.[10] In Malaysia, neither compensation nor a national compensation scheme for victims of trafficking is envisaged under the Anti-Trafficking Act. Nevertheless, victims of trafficking may file separate civil and criminal claims for compensation, although information on cases in which victims were awarded such compensations was not available (see Criminal Procedure Code, sect. 426).

73. Another important means of redress, specifically for victims of labour trafficking, is the recovery of unpaid wages. While not envisaged under the Anti-Trafficking Act, victims may nevertheless raise claims against their employers through either of two administrative processes, one before the Labour Department for claims concerning wages or any other payments in cash due to them (wrongful deductions, unpaid wages or unpaid compensation in the event of workplace injuries) and the other through the Industrial Relations Department for unfair dismissal (see Employment Act (1955), sect. 69, and Industrial Relations Act (1967)).

74. In certain circumstances, the Special Rapporteur is of the view that permanent or temporary residence in itself may be a necessary and appropriate form of remedy. This consideration is particularly pertinent in the case of Malaysia, where trafficked persons returned to their country of origin can be at serious risk of being re-trafficked or of severe violations of their human rights. In this regard, she acknowledges the recent steps taken by the Government to allow victims of labour trafficking to remain and work legally in Malaysia (see para. 77 below).

75. Besides operating on the assumption that victims are aware of their rights and systematically benefit from legal assistance, the above-mentioned redress mechanisms require victims to take additional steps and incur costs for lengthy trials. Moreover, tying restitution to the successful conviction of perpetrators in civil and criminal proceedings makes restitution contingent upon victims' cooperation in judicial processes. This prevents those victims who are reluctant to file complaints against their traffickers, and those whose cases were unsuccessful in court, from obtaining restitution and compensation. There are also concerns that cases resulting in the awarding of compensation are limited to cases of labour exploitation in sectors other than the entertainment/sex industry. Moreover, there is a risk of victims of labour trafficking who file cases against their employers being deported as a result of the cancellation of their work permits by those employers. Finally, the capacity of practitioners to correctly distinguish between cases of labour trafficking and other labour disputes also affects the type of redress awarded to victims. In the face of these obstacles, many victims opt to give up their rights to pursue claims, even if their cases are compelling.[11]

H. Repatriation and reintegration

76. Under the Anti-Trafficking Act, the fate of all victims of trafficking, whether identified or not, is their immediate removal from Malaysia (see Anti-Trafficking Act, sects. 51 and 54, and Immigration Act, sects. 8 and 32). However, it is not clear what the

[10] Trafficking in Persons Protocol art.6 (6) and the principles and guidelines on human rights and human trafficking, guideline 9.

[11] Amnesty International, *Trapped: The Exploitation of Migrant Workers in Malaysia* (2010), pp. 67–69.

procedures of return are and what safeguards are in place to ensure their safety and avoid their re-victimization.

77. In January 2012, victims of trafficking were allowed to take up employment in the country after completion of their stay in shelters. Subsequently, the first group of 33 victims, composed of Bangladeshi and Indians, took up employment offers. In March 2014, a government policy amending the Anti-Trafficking Act provided victims of labour trafficking who do not require further care and protection with the possibility of working before their protection order runs out. Upon fulfilment of some conditions/requirements, victims involved mainly in cases related to wages dispute can obtain special immigration passes renewable on a monthly basis. These passes cost RM 100, are only renewable for up to three months and do not grant the right to work. Upon securing new employment, the victims are issued with temporary employment work passes. Those who are unable to secure new employment within the stipulated period will be sent back to their countries.[12] At the time of visit of the Special Rapporteur, eight female victims of trafficking had been allowed to remain and work in Malaysia as domestic workers and as workers in an international hotel through this programme.

78. While these are encouraging initiatives, the Government's policy may be applicable to only a very limited number of victims of trafficking. Having valid travel documents for entry into Malaysia, a valid contract of employment and the financial means to pay the monthly fees for the special passes are prerequisites for victims to be considered under this programme. They also depend on the approval of the Ministry of Home Affairs, embassies and employers' approval for time off to enable victims to participate in legal procedures. Finally, the scope of this policy restricts its application to victims of trafficking for the purpose of labour exploitation only and does not address other types of exploitation, contrary to both the Anti-Trafficking Act and the Trafficking in Persons Protocol.

I. Prevention

1. Public awareness

79. The Government has taken a number of measures aimed at preventing trafficking in persons, primarily in the form of awareness-raising campaigns and publications. In 2014, it launched 5,126 campaigns[13] through media such as radio, television and publications to raise public awareness about trafficking issues, and distributed information about trafficking in Bahasa Malaysia, Mandarin, Tamil and other languages. NGOs and the National Human Rights Institution contribute to the dissemination of information. Yet, despite the increased attention devoted to the issue, some stakeholders have expressed concern about the difficulty of ensuring that these awareness-raising efforts appropriately target trafficked persons, those at risk of being trafficked or otherwise exploited, their employers or employment agencies.

80. While the Special Rapporteur acknowledges these efforts, she underscores the importance of addressing demand as a prevention strategy, which, in the context of Malaysia, includes demand for exploitative labour and sex. With regard to the demand for exploitative labour of migrant workers, including domestic workers, the Special Rapporteur stresses that the protection of labour rights is essential in reducing demand and in preventing exploitation from occurring in the first place. The regulation, licensing and

[12] See Chairman of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, media statement entitled "Permission to Work for Labour Trafficking Victims", delivered on 5 March 2014.

[13] See Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, "Progress report 2014/2015", p. iii.

monitoring of recruitment and employment agencies has yet to be effective in preventing exploitation of migrant workers. There is also a critical need to raise the awareness of employers and employment agencies about the labour rights of all workers under international human rights law and standards in order to avoid trafficking.

2. Safe migration

81. Current immigration practices focus on criminalizing rather than protecting the migrant labour force, which includes victims of trafficking, refugees and asylum seekers, who lack formal recognition in Malaysia.

82. In this regard, she wishes to reiterate that more opportunities for safe migration, i.e., legal, gainful and non-exploitative, are needed if Malaysia is to effectively address the demand for exploitable labour and fulfil its obligations to respect, protect and promote the labour rights of all workers, including migrants.

3. Public-private partnerships

83. Globally, the prevention of trafficking through public-private partnerships is gaining ground. Through self-regulatory mechanisms such as corporate social responsibility, businesses have taken steps to, inter alia, try to remove from their supply chains trafficked labour.

84. In Malaysia, the Special Rapporteur was pleased to learn about the recent initiatives of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants to engage with the electronic, airline and plantation industries. In this regard, she notes that dialogue and training sessions related to forced labour were provided to four companies within the electronic industry sectors in Shah Alam, Penang and Johor Bahru; collaboration with AirAsia Foundation to implement an AirAsia anti-human trafficking programme was initiated; and dialogues were held with several palm oil associations and the National Union of Plantation Workers.[14] She was also encouraged by the recent initiative whereby an international hotel in Kuala Lumpur provided work opportunities for 4 victims of trafficking.[15] These initiatives are indeed encouraging, although they remain an exception. Preventing trafficking for the purposes of labour exploitation and other exploitation being used in national, international and multinational businesses should be the aspiration of all ethical business in Malaysia.

J. Cooperation and partnership

1. Cooperation with civil society

85. The contribution of and collaboration with CSOs are crucial in the fight against human trafficking. The National Plan of Action 2010–2015 aspires, inter alia, to establish close engagement and interaction with those CSOs with relevant knowledge and skills in the areas of policy, prevention, protection, rehabilitation and prosecution. However, in practice, only a very limited number of CSOs (five) take part in the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants and somewhat contribute to its anti-trafficking work, particularly in the provision of assistance to victims. The need has emerged for immediate steps to be taken to establish the necessary legal framework and

[14] Information provided by the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants during the visit of the Special Rapporteur.

[15] See Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, "Progress report 2014/2015", p. iv and viii.

support to enable a larger pool of potential service providers and CSOs to, among other assistance, provide protection and assistance to victims, including by running shelters, providing counselling and training victims.

2. International, regional and bilateral cooperation

86. Malaysia has concluded a number of memorandums of understanding on security and combating transnational organized crime with Australia, Bangladesh, Canada, China, Saudi Arabia, the United Kingdom and the United States of America. Malaysia also benefits from cooperation with the United Nations, international and regional organizations in areas such as training, assistance to victims of trafficking, repatriation and awareness-raising.

87. At the regional level, Malaysia spearheaded and ratified the Treaty on Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries. As the current chair of ASEAN, it is working towards the development of a ASEAN convention on trafficking in persons and a regional plan of action to combat trafficking in persons. Malaysia continues to support the Bali process and is also part of the ASEAN Association of Heads of Police, an arrangement for informal cooperation on law enforcement efforts that could also potentially focus on trafficking in persons.

III. Conclusions and recommendations

A. Conclusions

88. **The Special Rapporteur recognizes the efforts of Malaysia to fight trafficking in persons, as reflected in the promulgation and amendment of the Anti-Trafficking Act and the multidisciplinary approach to anti-trafficking measures, which involves key government agencies and some CSOs. Malaysia has also promoted bilateral and regional cooperation with other countries in the region.**

89. **It is difficult to determine the trends and scope of trafficking in Malaysia in the absence of a comprehensive assessment. Consequently, the State's main focus is on combating the sexual exploitation of women and girls, with little attention paid to trafficking for labour exploitation. The restrictive immigration policy focused on rapid deportation of irregular migrants does not provide the opportunity for accurate identification of and provision of assistance to victims of trafficking. There is a gap in its capacity to quickly and accurately identify victims of trafficking which is further exacerbated by the prevalence of corruption of some enforcement officials. The rate of prosecution of trafficking cases also remains very low, which perpetuates the impunity of traffickers and obstructs victims' access to justice.**

90. **The Special Rapporteur has serious concerns that the stay of victims of trafficking in shelters may amount to detention. In addition to infringing fundamental human rights relating to freedom of movement and protection from detention,[16] this presents a risk to their well-being. Staff in the shelters, despite being committed and dedicated, require specialized training and capacity-building. While acknowledging the Government's efforts to raise awareness, the Special Rapporteur notes that prevention is still at an early stage.**

[16] See OHCHR, Human Rights and Human Trafficking Fact Sheet No. 36, pp. 18–19, and report of the Working Group on Arbitrary Detention (A/HRC/22/44), paras. 55 and 57.

B. Recommendations

91. **On the basis of the above findings, and in the spirit of cooperation and dialogue, the Special Rapporteur offers the following recommendations to Malaysia:**

(a) **Ratify without delay the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families;**

(b) **Ratify, without delay, ILO Domestic Workers Convention, 2011 (No. 189); the ILO Protocol of 2014 to the Forced Labour Convention, 1930 and ILO Abolition of Forced Labour Convention, 1957 (No. 105);**

(c) **Ratify, without delay, the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto;**

(d) **Establish, with countries of origin, transit and of destination, bilateral and multilateral agreements for the exchange of information, mutual legal assistance and safe returns in order to jointly tackle the root causes of trafficking in persons in the region and implement existing agreements focusing on the human rights of trafficked victims.**

92. **With respect to the national framework, she recommends that the Government:**

(a) **Fast-track the amendment of the Anti-Trafficking in Persons and Anti–Smuggling of Migrants Act and other relevant policies in compliance with the requirements of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Inter alia, the amendment should focus on human rights and victims and provide victims in shelters with freedom of movement, a legal stay in Malaysia and employment while awaiting the outcome of their legal proceedings and beyond; non-criminalization of victims for all crimes committed in relation with their status as victims; compensation of victims; and the granting to NGOs of the status of protection officer to further contribute to the anti-trafficking work;**

(b) **Recognize the need for a foreign workforce and develop and review existing safe migration pathways, acknowledging that the current approach to migration management, especially the recruitment of foreign labour via unscrupulous employment agencies, may favour human trafficking;**

(c) **Amend the Employment Act in order to provide greater protection for migrant workers, including domestic workers, in accordance with international legal standards;**

(d) **Revise regulation of employment agencies and implement it stringently, and regularly monitor the activities of those agencies already licensed and take immediate action to revoke their licence and prosecute them where illegal activity involving trafficking in persons has taken place;**

(e) **Ensure that the ongoing revision of the Child Act (2001) provides further protection for children victims of trafficking;**

(f) **Evaluate the outcomes and lessons learned of the National Plan of Action to Combat Trafficking and Migrant Smuggling 2010–2015; finalize and rapidly adopt, after concerting with all stakeholders, a national plan of action for 2015–2020 taking a human rights and victim-centred approach and setting out clear objectives, responsibilities and indicators to measure progress, and allocate a dedicated budget for its implementation;**

(g) Carry out a national baseline study in collaboration with independent research institutes, bilateral partners and civil society to document the scope and trends of trafficking at the national level;

(h) Establish a systematized and harmonized data collection system on the phenomenon of human trafficking. Data on victims of trafficking should include their countries of origin and be disaggregated by, inter alia, sex, age and the nature and type of trafficking involved; the system should also include information on traffickers and data on investigations, prosecution rates and sentencing.

93. With regards to identification, training and capacity-building, she recommends that the Government:

(a) Specifically outline and harmonize identification protocols to combat trafficking in persons, developing a range of red flags and indicators to be used when screening vulnerable persons, including undocumented migrants, refugees, asylum seekers and stateless persons;

(b) Ensure that victims of trafficking can be identified, even when they are in immigration detention centres and avoid their repatriation and re-victimization;

(c) Provide legal clarity on the elements of trafficking and raise awareness of the distinction between cases of trafficking and other situations, including irregular migration, labour disputes and prostitution to facilitate accurate identification of victims by front-line officers;

(d) Continue providing comprehensive training programmes on trafficking in persons to enhance the knowledge and awareness of human trafficking of all stakeholders, including police, immigration, customs and maritime officers, labour inspectors, prosecutors, judges, lawyers, employers/businesses, employment agencies, CSOs and the media;

(e) Train all service providers (protection officers) involved in the assistance and care of victims of trafficking.

94. With respect to support service for victims of trafficking, she recommends that the Government:

(a) Protect and assist all victims of trafficking, including child victims, victims of labour trafficking and domestic servitude with full respect for their human rights, and integrate a human rights-based approach in the investigation of trafficking cases;

(b) Make provision for unconditional and appropriate assistance, including social, psychological, medical and legal support, as well as translation assistance and interpretation services, in accordance with article 6 (6) of the Trafficking in Persons Protocol in shelters. Ensure victims inside shelters have freedom of movement, access to employment and legal stay in the country;

(c) Amend the existing legal framework to enable adequately funded service providers and organizations working on trafficking in persons to provide comprehensive assistance, such as social, psychological, medical and legal support, as well as translation and interpretation services, for victims of trafficking;

(d) Provide victims of trafficking who do not wish to return to their countries owing to fear of retribution, hardship or re-trafficking viable alternatives to remain and work legally in Malaysia, including through granting special work permits and employment visas;

(e) **Ensure that the free 24-hour hotlines are accessible in the languages that may be the only ones that potential victims speak and are serviced by multilingual staff who have received specialized training on trafficking in persons;**

(f) **Maintain close cooperation with international and regional organizations, particularly the International Organization for Migration and the Office of the United Nations High Commissioner for Refugees as well as diplomatic missions for the safe return of trafficked victims to their country of origin, having due regard to the need, if any, for international protection of the victims and the application of the principle of non-refoulement;**

(g) **Establish a fund that will provide for a comprehensive national compensation scheme for victims of trafficking;**

(h) **Ensure that appropriate procedures are in place to evaluate the best interests of the child during the stage of identification, protection and assistance and before making any decision on the eventual repatriation of the child.**

95. **With respect to prosecution, the Special Rapporteur recommends that the Government:**

(a) **Improve the justice delivery system to ensure speedy adjudication of cases of trafficking while guaranteeing fair-trial rights consistent with a human rights-based approach to criminal justice responses;**

(b) **Ensure that in the prosecution of cases of trafficking, victim/witness protection before, during and after the trial is duly implemented to avoid reprisal;**

(c) **Ensure that the best interest of the child is at the heart of the criminal justice response.**

96. **With respect to prevention, the Special Rapporteur recommends that the Government:**

(a) **Step up efforts to raise awareness about all forms of trafficking in persons, including for domestic servitude, forced labour and sexual exploitation, in order to promote understanding of what constitutes trafficking among the general population, the foreign community, employers and employment agencies;**

(b) **Conduct surveys to assess the impact of the awareness-raising campaigns, which should be extended to the whole country and especially to areas where there is a high concentration of persons in vulnerable positions. Moreover, the language factors must be taken into account when developing public awareness tools;**

(c) **Empower non-governmental organizations, including through increased interaction and the provision of funds, to conduct sensitization on trafficking and to handle complaints related to trafficking;**

(d) **Sensitize businesses about human trafficking and encourage them to make and maintain a supply chain free from trafficking, including through the establishment of self-regulatory mechanisms and tools.**